

December 26, 1996  
Page 7

RESOLVED, that the appropriate officers of the Corporation be, and they hereby are, authorized and empowered on behalf of, and in the name of, the Corporation to execute a plan of reorganization under chapter 11 of the Bankruptcy Code, including any and all modifications, supplements, and amendments thereto, and to cause the same to be filed in the United States Bankruptcy Court for the District of Delaware at such time as said authorized officer executing the same shall determine; and

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 be, and it hereby is, employed as attorneys for the Corporation under a general retainer; and

RESOLVED, that the appropriate officers be, and they hereby are, authorized and empowered on behalf of, and in the name of, the Corporation to retain and employ other attorneys, investment bankers, accountants, restructuring professionals, financial advisors and other professionals to assist in the Corporation's chapter 11 case on such terms as are deemed necessary, proper or desirable: and

RESOLVED, that in connection with the commencement of the chapter 11 cases by the Corporation, the appropriate officers of the Corporation be and hereby are, authorized and empowered on behalf of, and in the name of, the Corporation, to negotiate, execute and deliver a debtor-in-possession loan facility (including, in connection therewith, such notes, security agreements and other agreements or instruments as such officers consider appropriate) on such terms and conditions as such officer or officers executing the same may consider necessary, proper or desirable, such determination to be conclusively evidenced by such execution or the taking of such action, and to consummate the transactions contemplated by such agreements or instruments on behalf of the Corporation and any pertinent affiliates; and

RESOLVED, that the appropriate officers of the Corporation and any employees or agents (including counsel) designated by or directed by any such officers, be, and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation to cause the Corporation and such of its affiliates as management deems appropriate to file such definitive plans of reorganization or joint plans of reorganization as may be authorized by the Boards, and any and all authorized modifications, supplements or amendments thereto, and such other agreements, instruments and documents as may be necessary, appropriate or desirable in connection with such plans and to make such motions and other filings with the Bankruptcy Court, and do all other things, as may be or become necessary, appropriate or desirable for the successful confirmation of such plans; and

December 26, 1996  
Page 8

RESOLVED, that, in the judgment of the Board, it is desirable and in the best interests of the Corporation that, in connection with the Reorganization, the Corporation issue and sell to Andrews Group a number of shares of Company Common Stock, constituting approximately 80.8% of the issued and outstanding Company Common Stock after giving effect to such issuance and sale, in exchange for approximately \$365 million in cash or, in the alternative, in exchange for shares of the Class A Common Stock of Toy Biz having an equivalent value, or a combination of cash and Class A Common Stock; and

RESOLVED, that the form, terms and provisions of the Acquisition Agreement, in substantially the form attached hereto as Exhibit A, be, and the same hereby is, authorized and approved; and

RESOLVED, that in the event that Andrews Group purchases Company Common Stock in exchange for cash pursuant to and in accordance with the terms of the Acquisition Agreement, it is desirable and in the best interests of the Corporation to use such cash to acquire the shares of Class A Common Stock and Series A Preferred Stock of Toy Biz that the Corporation does not already own and which are not being delivered by Andrews Group to the Corporation pursuant to the Acquisition Agreement, and assume the obligations of Andrews Group (or an affiliate or subsidiary thereof) under (i) the Merger Agreement providing for the purchase of Series A Preferred Stock and publicly held Class A Common Stock of Toy Biz in substantially the form attached hereto as Exhibit B, (ii) the Arad Stock Purchase Agreement and (iii) the Perlmutter Stock Purchase Agreement, with such changes to any of the foregoing documents as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution or the taking of such action, and to consummate the respective transactions contemplated hereby; and

RESOLVED, that in the event Andrews Group purchases Company Common Stock in exchange for cash and assigns to the Company, in accordance with the terms of the Acquisition Agreement, the rights and obligations of Andrews Group under the Merger Agreement and under the Arad Stock Purchase Agreement and the Perlmutter Stock Purchase Agreement attached hereto as Exhibit C and Exhibit D, respectively, such rights and obligations of Andrews Group shall be accepted and assumed by the Corporation, and, the acceptance and assumption by the Corporation of the same be, and the same hereby is, authorized and approved; and

RESOLVED, that the appropriate officers of the Corporation be, and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation to negotiate, execute and deliver the Acquisition Agreement, and appropriate

LGL-SWEDO/BOARD/DEC23/96.WTC

December 26, 1996  
Page 9

instruments of assignment and assumption with respect to each of the Arad Stock Purchase Agreement, the Perlmutter Stock Purchase Agreement and the Merger Agreement, with such changes to any of the foregoing documents as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution or the taking of such action, provided that any material change on behalf of the Corporation to any such document that would be less favorable to the Corporation shall require the approval of the Board, and to consummate the respective transactions contemplated hereby; and

RESOLVED, that the appropriate officers of the Corporation be, and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation (i) to negotiate, execute and deliver, upon or following the assumption by the Corporation of the Arad Stock Purchase Agreement and the Perlmutter Stock Purchase Agreement, the Promissory Notes contemplated thereby with such changes thereto as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution, or (ii) to execute, negotiate and deliver one or more Promissory Notes to Andrews Group on substantially the same terms and conditions as any Promissory Notes to be issued by Andrews Group to Arad and Perlmutter in connection with the consummation of the transactions contemplated by the Arad Stock Purchase Agreement or the Perlmutter Stock Purchase Agreement (the "Arad/Perlmutter Notes") with such changes thereto as such officer or officers executing the same may approve, such approval to be conclusively evidenced by such execution; and

RESOLVED, that the appropriate officers of the Corporation, and any employees or agents (including counsel) designated by or directed by any such officers, be, and each hereby is, authorized and empowered to cause the Corporation and such of its affiliates as management deems appropriate to enter into, execute, deliver, certify, file and/or record, and perform, such agreements, instruments, motions, affidavits, applications for approvals or ruling of governmental or regulatory authorities, certificates and other documents, and to take such other actions, as in the judgment of such officer shall be or become necessary, proper and desirable to prosecute to a successful completion the chapter 11 cases, to effectuate the restructuring of the debt, other obligations, organizational form and structure and ownership of the Corporation and its subsidiaries consistent with the foregoing resolutions and to carry out and put into effect the purposes of the foregoing resolutions and the transactions contemplated by these resolutions, their authority thereunto to be evidenced by the taking of such actions; and

LGL-SWAKO/BOARD/DEC26/96 WTC

B 193

ME 01072

December 26, 1996  
Page 10

RESOLVED, that any and all past actions heretofore taken by officers or directors of the Corporation in the name of and on behalf of the Corporation in furtherance of any or all of the preceding resolutions be, and the same hereby are ratified, approved and adopted.

### Adjournment

There being no further business to come before the Meeting, a motion to adjourn the Meeting was made, seconded and passed, and the Meeting was thereupon adjourned.

Steve W.  
Secretary

Exhibit A  
Form of the Stock Purchase Agreement between  
Andrews Group Incorporated and the Corporation

B 195

ME 01074

00001

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE

3 -----x

4 RONALD CANTOR, IVAN SNYDER,

5 JAMES A. SCARPONE, as Trustee of

6 the MAFCO LITIGATION TRUST,

7 Plaintiffs,

8 C.A. No.

9 97-586 (KAJ)

10 vs.

11 RONALD O. PERELMAN, MAFCO

12 HOLDINGS, INC., MACANDREWS &

13 FORBES HOLDINGS, INC., ANDREWS

14 GROUP INCORPORATED, WILLIAM C.

15 BEVINS AND DONALD G. DRAPKIN,

16 Defendants.

17 -----x

18 VIDEOTAPED DEPOSITION OF PETER A. FOWLER

19 WEDNESDAY, APRIL 19, 2006

20 HUDSON REPORTING & VIDEO, INC.

21 124 West 30th Street, 2nd Fl.

22 New York, New York 10001

23 Tel: (212) 273-9911 Fax: (212) 273-9915

24

25

00002

1

2 Videotaped deposition of PETER A. FOWLER

3 taken in the above-entitled matter before Mark

4 Iuzzolino, a Certified Shorthand Reporter (License

5 No. X101103) and Notary Public of the State of New

6 Jersey, taken at the offices of FRIEDMAN, KAPLAN,

7 SEILER & ADELMAN, LLP, 1633 Broadway, New York,

8 New York 10019, on WEDNESDAY, APRIL 19, 2006,

9 commencing at 10:03 a.m.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

00068

1

2 A. Right.

3 Q. -- as banker --

4 MR. LOCKWOOD: This is not about what  
5 Mr. Engelman told him, but based on his  
6 experience?

7 MR. FRIEDMAN: Correct, correct.

8 Q. Well, it's actually based on both. I'm  
9 asking a question about what Mr. Engelman told  
10 you.

11 MR. LOCKWOOD: I think you should either  
12 ask him about --

13 Q. Let me make it clear. I think it's a  
14 proper question, but I'll break it down.

15 Mr. Engelman told you that the restrictions  
16 were included in the indenture as part of the  
17 negotiation between the issuer and the  
18 underwriter. Correct?

19 A. That's correct.

20 Q. Did Mr. Engelman tell you whether it was  
21 the issuer or the underwriter in this case who had  
22 proposed including the restrictions in the  
23 indenture?

24 A. I believe that he told me that they  
25 called prospective underwriters, investment banks

00069

1

2 they dealt with, and said, "We have a need" -- as  
 3 they had with a variety of their companies, to  
 4 think about monetizing their investments, and  
 5 asked the underwriters for ideas. So in that  
 6 case, I guess -- I don't know precisely, but I  
 7 believe the underwriter might have put it in a  
 8 term sheet that he sent to the company.

9     Q. And now I'm asking a question based on  
 10 your experience as a banker.

11     Based on your experience, would you think  
 12 that, in this particular case, the underwriter  
 13 would have proposed including the restrictions, or  
 14 the issuer would have proposed including the  
 15 restrictions?

16     A. The normal process is, an underwriter  
 17 says, "Here's what we think you can do," delivers  
 18 a draft term sheet, and then the issuer goes  
 19 through ever provision and pushes and pulls,  
 20 depending on what he -- to get the best possible  
 21 deal he can as an issuer.

22     Q. My precise question is: Based on your  
 23 experience, would you have expected in this  
 24 negotiation between MacAndrews & Forbes on the one  
 25 hand and the underwriters on the other that the

00070

1

2 underwriters would have proposed including the  
3 restrictions, or would you have expected that the  
4 issuer would have proposed including the  
5 restrictions?

6     A. I would have expected the underwriters  
7 would have included it in a term sheet describing  
8 the issue that they thought they could execute.

9     Q. And would you have expected that when  
10 the issuers reviewed that term sheet, they would  
11 have pushed back with respect to terms that they  
12 did not like?

13     A. I would have expected them to negotiate  
14 on every possible term.

15     Q. Including the restrictions?

16     A. Uh-huh.

17     Q. You have to say yes.

18     A. Yes. Sorry.

19     Q. Now, you asked Mr. Engelman whether --

20     MR. LOCKWOOD: Can we just note for the  
21 record that Mr. Fasman has entered the room?

22     MR. FRIEDMAN: It would be an honor.

23 How are you doing, Steve?

24     Q. You said you asked Mr. Engelman whether  
25 they considered puts rather than the restrictions.

00197

1

2 which a controlling shareholder engaged in  
 3 financing for its own benefit. Let's just stop  
 4 there for a moment. You understand that the  
 5 Marvel holding company note issuances were  
 6 financing transactions for the benefit of the  
 7 Marvel holding companies and their parents.

8 Correct?

9 MR. LOCKWOOD: Objection to the form.

10 A. What do you mean by "benefit"?

11 Q. Was Marvel the operating company  
 12 receiving any of the proceeds of the holding  
 13 company note issues?

14 A. Not that I'm aware of, not that I'm  
 15 aware of.

16 Q. And you've already testified that, as  
 17 far as you know, the Marvel operating company was  
 18 not receiving any benefits from the holding  
 19 company --

20 A. That's correct, uh-huh.

21 Q. -- note issuances. Correct?

22 A. That's correct.

23 Q. Is it your understanding that the  
 24 holding companies themselves and their parent  
 25 corporations would benefit from the proceeds

00198

1

2 obtained upon the holding company note issuances?

3 A. Yes.

4 Q. And you are aware that at the time of  
5 the holding company note issuances, the holding  
6 companies were the majority shareholders in  
7 Marvel, the operating company?

8 A. Yes.

9 Q. My question is: Other than these Marvel  
10 holding company transactions, are you aware of any  
11 transaction in which a controlling shareholder  
12 engaged in financing for its own benefit with  
13 promises that it would cause its public company  
14 subsidiary to comply with certain covenants?

15 A. I'm not entirely sure. What I'd have to  
16 do is review all the holding company issues to be  
17 evaluated because I believe some of the proceeds  
18 from those holding company issues did not come  
19 down to the operating company. And I'd have to  
20 review the other component of your question, which  
21 asked: Were there financial covenants, you know,  
22 restricting the operating company?

23 Q. Now, you have your report open. Is that  
24 because you're looking at Exhibit 6?

25 A. Exhibit 6 might have some of that

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

---

RONALD CANTOR, IVAN SNYDER and JAMES  
A. SCARPONE, as TRUSTEES OF THE MAFCO  
LITIGATION and Successors in Interest  
to the Marvel Entertainment Group,  
Inc., et al.,

Plaintiffs,

vs.

97-CIV-586-KAJ

RONALD O. PERELMAN, et al.,

Defendant.

---

DEPOSITION OF BEVIS LONGSTRETH

New York, New York

Wednesday, May 24, 2006

Reported by:

Adrienne M. Mignano

JOB NO. 184644

Page 2

1

2

3

4

May 24, 2006

5

10:00 a.m.

6

7

Deposition of BEVIS LONGSTRETH,

8

held at the offices of Skadden Arps,

9

Four Times Square, New York, New York,

10

pursuant to Notice, before Adrienne M.

11

Mignano, a Notary Public of the State

12

of New York.

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2 A P P E A R A N C E S:

3

4 FRIEDMAN, KAPLAN, SEILER & ADELMAN, LLP

5 Attorneys for Plaintiffs

6

1633 Broadway

New York, New York 10019-6708

7

8 BY: EDWARD A. FRIEDMAN, ESQ.

9

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

10 Attorneys for Defendants

11 One Rodney Square

12 Wilmington, Delaware 19801

13

14 BY: PAUL J. LOCKWOOD, ESQ.

15 BRIAN G. LENHARD, ESQ.

16

17

18

19

20

21

22

23

24

25

1

2           IT IS HEREBY STIPULATED AND AGREED,  
3        by and between counsel for the respective  
4        parties hereto, that the filing, sealing and  
5        certification of the within deposition shall  
6        be and the same are hereby waived;

7           IT IS FURTHER STIPULATED AND AGREED  
8        that all objections, except as to the form  
9        of the question, shall be reserved to the  
10       time of the trial;

11          IT IS FURTHER STIPULATED AND AGREED  
12        that the within deposition may be signed  
13        before any Notary Public with the same force  
14        and effect as if signed and sworn to before  
15       the Court.

16

17

18

19

20

21

22

23

24

25

1

2 THE VIDEOGRAPHER: This is tape  
3 number one of the videotaped  
4 deposition of Mr. Bevis Longstreth in  
5 the matter of Ronald Cantor, et al.  
6 versus Ronald L. Perelman, et al., in  
7 the United States District Court,  
8 District of Delaware, number  
9 97-CIV-586-KAJ.

10

11 Skadden Arps, Four Times Square, New  
12 York, New York on May 24, 2006 at  
13 approximately 10:02 a.m.

14

20

21 themselves.

22

23 Skadden Arps on behalf of defendants,  
24 and with me is Brian Lenhard.

25

MR. FRIEDMAN: Ed Friedman

7 B E V I S   L O N G S T R E T H,   called as  
8 a witness, having been duly sworn by a  
9 Notary Public, was examined and  
10 testified as follows:

11 EXAMINATION BY

12 MR. LOCKWOOD:

13           Q.     Mr. Longstreth, you were previously  
14     deposed in this case, and in the course of  
15     this deposition, there were certain exhibits  
16     that were marked. I'm going to put these in  
17     front of you and I'll give your counsel a set  
18     as well. I may make reference to those  
19     previous exhibits.

20 A. Okay.

21 Q. When I do, we'll refer to them.  
22 This copy, I'll let you know because I don't  
23 expect I'm going to get to Exhibit 5, but  
24 Exhibit 5 is a little messed up in this set.  
25 that I noticed this morning. But we'll deal

# Longstreh

2 with that when we have to deal with it, and  
3 if we have to deal with it.

4 MR. FRIEDMAN: I don't have a tab  
5 5.

6 MR. LOCKWOOD: Exactly.

7 MR. FRIEDMAN: What is Exhibit 5?

12 MR. FRIEDMAN: Very good.

13 BY MR. LOCKWOOD.

14 Q. Let me introduce myself for the  
15 record even though I did so for the  
16 videographer.

17                   My name is Paul Lockwood, and I'm  
18                   from Skadden Arps representing the defendants  
19                   in this action.

20 I'm going to be asking you  
21 questions today and in doing so, I'll  
22 endeavor to be as clear as I can, but I might  
23 fail in that attempt. And if I do so and you  
24 do not understand my question, just please  
25 speak up, let me know, and I'll try to

1 Longstreth

2 rephrase.

3 A. Okay.

4 Q. If that's okay?

5                   A.           Uh-huh.

6 Q. Did you do anything to prepare for  
7 today's deposition?

8 A. Yeah, I did

9 Q. What was that?

10           A.       I reviewed my expert report and my  
11        rebuttal report and Peter Fowler's report.

12 Q. Did you review any other documents  
13 besides those three documents?

14 A. No.

15 Q. When were you first asked to  
16 provide an opinion rebutting Mr. Fowler's  
17 report?

18           A.     Well, sometime after the last  
19 deposition, but I can't pinpoint the date.

20 Q. So sometime in late April; does  
21 that sound right?

22           A.     Probably. If that's important, I  
23           can find a date.

24 Q. Let me see if I can help pinpoint  
25 it for you.

# Longstreth

2 Did you travel out of the country  
3 in late April or early May?

4 A. I did.

5 Q. Do you know when that was?

6           A.     Yes, I was gone in London for the  
7           last week of April.

8 Q. And had you started on this project  
9 of responding to Mr. Fowler's report before  
10 that trip?

11 A. Yes.

12 O. Yes?

13           A.     You're helping me recall, because  
14           I -- as I recall, I think I told Ed that I  
15           would try to write a response on the plane  
16           coming back from London.

<sup>17</sup> Q. And is that what you did?

18 A. I did

19 Q. So you were on the airplane with a  
20 notepad or a computer drafting a response?

21           A.     I didn't take my computer.  And I  
22     wrote the report on my computer, therefore,  
23     what I think I did was to study Mr. Fowler's  
24     report on the plane and make notes, and then  
25     at some point after I got back to New York

1

**Longstreth**

2

and had access to my computer, wrenching it  
away from my wife.

4

5

6

Q. Did you use the notes that you had  
prepared on the plane in drafting your  
report?

7

**A. I did.**

8

9

10

Q. Did you look at any documents in  
preparing your second report other than  
Mr. Fowler's report?

11

12

**A. No. Well, other than my own  
report, my original report.**

13

14

Q. So you looked at your original  
report?

15

**A. I did.**

16

17

Q. And you looked at Mr. Fowler's  
report; is that right?

18

**A. Yes.**

19

20

21

Q. There is in your original report a  
set of materials considered. Are you  
familiar with that portion of your report?

22

**A. Right.**

23

24

25

Q. Did you go back and look at any of  
those materials that you had previously  
looked at?

1

Longstreth

2

**A. No.**

3

Q. There is in Mr. Fowler's report an exhibit entitled "Materials Considered" that lists the documents that he looked at.

6

Are you familiar with that portion of his report?

8

**A. I read his report from cover to cover.**

10

Q. And he has an exhibit to his report that has a set of the documents he considered, correct?

13

**A. Right.**

14

Q. Did you go and look at the documents that he considered?

16

**A. No.**

17

Q. The report that you provided first time out, in preparing that report, you didn't rely on any other expert's opinion; is that correct?

21

**A. Rely on any other expert's opinion?**

22

Q. In reaching your own opinion.

23

**A. No, I don't think so.**

24

Q. And there is a double negative, so

25

that means you didn't?

1 Longstreh

2 A. I did not.

3           Q.     And in your second report in which  
4     you looked at your original report and  
5     Mr. Fowler's report, I take it then that you  
6     didn't rely on or incorporate any other  
7     expert's opinion into this second report?

8 A. No.

9                   Q.     Have you read any of the other  
10                  expert reports?

11 A. Yes.

12 Q. Which ones have you read?

13           A.     Well, I read the one -- I think I  
14        have read them all, but I don't remember all  
15        of them at the moment.

16 Q. Did you read any other expert  
17 reports besides Mr. Fowler's and your own  
18 before writing your second report?

19           A.     No, that's the third time you have  
20        asked me that. I guess I'm trying to give  
21        you the same answer each time.

22 Q. I appreciate that.

23                   The plaintiffs have offered some  
24 other experts. I'll just give you their  
25 names to try to help you in remembering the

1 Longstreth  
2 reports.

3 One of their experts is a  
4 Mr. Baliban. Are you familiar with  
5 Mr. Baliban's report?

6           A.       I looked at it; I read it.

7 Q. Did you read that carefully and  
8 scrutinize that report?

9           A.     I gave it as much care as I thought  
10           I needed to give it.

11 Q. And since you didn't rely on it,  
12 how much care did you need to give it?

13           A.     Well, what in my judgment seems  
14 sufficient.

15 Q. Did you give it a quick read or did  
16 you read it slowly cover to cover; do you  
17 remember?

18 A. I don't remember

19 Q. What about Mr. Carron's report, he  
20 is another expert that the plaintiffs have  
21 engaged?

22           A.     I remember reading that too about  
23           the same way.

24 Q. So meaning that you don't remember  
25 how you read it?

# Longstreth

2           A.     I don't remember precisely how long  
3           it took me to read it.

4 Q. There is another expert that  
5 plaintiffs engaged by the name of Purcell.  
6 He has three reports. Have you seen his  
7 reports?

8 A. I think so.

9 Q. And do you know whether you spent a  
10 significant amount of time reading and  
11 analyzing those reports?

12           A.     I just gave it the attention that I  
13           thought it deserved

14 Q. And can you remember specifically  
15 whether it was something that you read more  
16 than once?

17 A. I can't remember

18 Q. What about Mr. Carron's report, do  
19 you know whether you read that more than  
20 once?

21 A. I can't remember that well.

22 Q. What about Mr. Balibar?

23 A. Or that

24 Q. There is also an opinion that the  
25 plaintiffs have stating in a report by

1 Longstreth

<sup>2</sup> Justice Walsh, former justice of the Delaware  
<sup>3</sup> Supreme Court.

4 Have you seen that report?

5 A. I think so.

6 Q. Do you know whether you read it?

7 A. I think I read it.

8 Q. Do you know whether you read it  
9 more than once?

10 A. I don't remember.

15 (Longstreth Exhibit 6, Rebuttal  
16 Expert Report of Bevis Longstreth,  
17 marked for identification, as of this  
18 date.)

19 Q. Mr. Longstreth, is this document  
20 that I put in front of you marked as Exhibit  
21 6, this is your rebuttal report; is that  
22 correct?

23 A. Yes.

24 Q. And were you the sole author of  
25 this report?

1 Longstreth

2 A. I am.

3 Q. Did you have any input from anybody  
4 else?

5           A.     I took comments on a draft from Ed  
6     Friedman and Gary Friedman.

7 Q. Did you take any notes when you  
8 were receiving comments from Mr. Friedman and  
9 Mr. Friedman?

10 A. No.

11 Q. In general terms, what is the  
12 question or issue that you seek to address in  
13 this rebuttal report?

14           A.     Well, the Fowler report contained a  
15     hypothetical negotiation between Marvel, and  
16     I assume it meant the independent directors  
17     of Marvel, and the holding companies, and my  
18     report addressed the nature and scope and  
19     substance of that hypothetical negotiation,  
20     and was my effort to reflect a different  
21     point of view about how such a negotiation  
22     might have progressed. And beyond  
23     progressing, how it might have initiated. So  
4     that's it.

25

MR. LOCKWOOD: Let's mark as

1 Longstreth  
2 Exhibit 7 the rebuttal expert report  
3 of Peter Fowler.

4 (Longstreth Exhibit 7, Rebuttal  
5 Expert Report of Peter Fowler, marked  
6 for identification, as of this date.)

12 Q. Is that on yours as well?

13 A. I have got the same thing, yeah.

16 MR. FRIEDMAN: Done.

17 Q. Mr. Longstreth, Exhibit 7 is the  
18 Fowler report that you were rebutting; is  
19 that correct?

20 A. Yes.

21 Q. Let me take you to page 2 of  
22 Mr. Fowler's report.

23 A. Okay.

24 Q. Under the heading "Assignment", do  
25 you see that portion of the report?

1 Longstreh

2 A. Yes.

3 Q. And in the second sentence of  
4 Mr. Fowler's report he says, "In providing  
5 that rebuttal, I have been asked to assume  
6 that the indenture restrictions bound Marvel  
7 and to determine how much the Marvel holding  
8 companies would have had to pay Marvel after  
9 arm's length bargaining at the time of the  
10 issuance of the holding company notes to  
11 compensate Marvel for these restrictions."

12                           Is that the issue that you were  
13 responding to in your report?

14 A. Yes.

15 Well, I'm responding to the -- I'm  
16 not responding to that question so much as  
17 I'm responding to the hypothetical arm's  
18 length bargaining that Mr. Fowler inserted in  
19 his report.

20 To answer this question, he didn't  
21 need to do that, but he did choose to do it.  
22 And having done it, it raises questions as to  
23 the realism of what he was doing. And it  
24 reveals the basis on which he arrived  
25 ultimately at an answer to this question.

1 Longstreth

2 And I think that I was requested to address  
3 the realism of what he depicted as an arm's  
4 length negotiation.

5 Q. If you go to the exhibits that were  
6 previously marked at your deposition in  
7 April.

8 A. Up here?

9 O. Yes.

10 I'd like you to take a look at  
11 Exhibit 1, which is your original expert  
12 report.

13 A. Okay.

14 Q. And I would like to draw you to  
15 page 2 of that report.

16 A. Yes.

17 Q. There is a block quote at the top  
18 of the page under the heading "Opinion".

19 Do you see that?

20                   A.                   Yes.

21 Q. It begins, "We wish to obtain your  
22 expert opinion" --

23 A. Right.

24 Q. -- "with respect to the nature of.  
25 arm's length bargaining that would have been

# 1 Longstreh

2 conducted by Marvel with Perelman if Perelman  
3 had presented to the independent directors of  
4 Marvel a request that Marvel assist and  
5 acquiesced in the note transactions as it  
6 did."

7                   My question is: How is your  
8 rebuttal report different in the issue that  
9 it analyzes from your initial report and the  
10 question that you analyzed in that initial  
11 report?

12           A.     Well, in the initial report, I  
13     focused on the, really, almost exclusively on  
14     the second sentence, and then very  
15     specifically on the answers to the questions  
16     that were put to me in a letter. I think.

17 Q. There is a letter from Mr. Friedman  
18 that's Exhibit C to your initial report.

19 A. Yeah.

20 Q. Is that what you're referring to?

21           A.     Yeah, I'm trying to find the  
22        questions. There were specific questions.  
23        And you can see I -- my report starts with  
24        the answer to question one.

25 Q. There are seven questions listed on

1

Longstreth

2

pages five and six of Exhibit C to your  
initial report.

4

Is that what you're referring to?

5

**A. I'm fumbling around here because --**

6

Q. You're going beyond the -- it's  
confusing because you have all the exhibits  
there. Stay within the first.

9

**A. Okay.**

10

That's right. Those are the  
questions.

12

Q. If you go to the previous page,  
page 4 of Mr. Friedman's letter.

14

**A. Okay.**

15

Q. "Questions To Be Addressed". Do  
you see that heading?

17

**A. Yes.**

18

Q. And his overarching question to  
you, at least as I read this letter, is set  
forth in the topic sentence of that  
paragraph. "We wish to obtain your expert  
opinion with respect to the nature of the  
arm's length bargaining that would have been  
conducted by Marvel with Perelman if Perelman  
had presented to the independent directors of

1 Longstretch

2       Marvel a request that Marvel assist and  
3       acquiesce in the note transactions as it  
4       did."

5 Did you address that?

6           A.     Well, that's the same paragraph as  
7     I quoted in my answer.

8 Q. And did your initial report, did it  
9 address that question posed by the first  
10 sentence of the paragraph quoted on page 2 of  
11 your report?

12           A.     It really did not. It addressed  
13           the second general question in that  
14           paragraph, and then moved immediately to  
15           answer the specific questions.

16 Q. Does your rebuttal report, does it  
17 respond to this first question that's posed  
18 in the paragraph on page 2 of your report?

21           A.     Well, it responds to what Ed  
22           Friedman asked me to do, which was to  
23           consider the Fowler hypothetical negotiation  
24           and comment on the -- on how close to a real  
25           negotiation it came.

1

**Longstreth**

2

Q. If you could, I'm going to ask you  
to look at two things at once. Page two of  
your initial report and that block quote.

5

**A. Right.**

6

Q. And that first sentence there and  
Exhibit 7, Mr. Fowler's report.

8

**A. Page 7?**

9

Q. Page 2 of Fowler's report,  
paragraph 5.

11

**A. I got it, yeah.**

12

**Oh, wait a minute.**

13

Q. The second sentence.

14

**A. Page 5 did you say?**

15

Q. Paragraph 5.

16

**A. I got it.**

17

Q. The second sentence of paragraph 5  
where he discusses what he was asked to do.  
And I want you to compare the issue  
identified in the first sentence of the block  
quote in your first report and that sentence  
in the second sentence of paragraph 5 of  
Mr. Fowler's report, and just tell me if, to  
your understanding, there is a meaningful  
difference between the issues described in

1 Longstreth

2 those two sentences?

5           A.       If there is a meaningful  
6           difference?

7 Q. Well, I'll be up front with you.

8 As I read the first sentence in the block  
9 quote in your paragraph that begins "we wish  
10 to obtain your expert opinion" --

11 A. Yes.

12 Q. -- I look at that, and I look at  
13 Mr. Fowler's report paragraph 5, the sentence  
14 that begins "In providing that rebuttal, I  
15 have been asked to assume" -- and it goes on  
16 from there.

17 I read those two sentences as  
18 essentially addressing the same subject  
19 matter.

20 Do you read them that way as well?

21 A. No.

22 Q. Why not?

23           A.     Well, Mr. Fowler's -- in the  
24        assignment given to Mr. Fowler, there is a  
25        simple question being asked, which is how

1

Longstreth

2

much Marvel holding would have to pay Marvel.

3

In an arm's length negotiation, what would  
they pay? And that's the question. That is  
not the question here.

6

In this paragraph, which is much,  
much broader, I'm being asked to give an  
opinion on the nature of the arm's length  
bargaining that would have occurred.

10

I took that paragraph frankly to  
not be asking me to package a negotiation,  
but rather to ask me to consider the --  
really relying on the second sentence, "What  
are the considerations that an independent  
director would take into account in  
considering this note issuance?"

17

In other words, in its broadest  
context, and I never answered the first  
question directly. I answered the questions  
that were put to me. That's how I went about  
this. And I set out a bunch of  
considerations that I thought a director who  
was truly independent would have to think  
about, including, of course, whether there is  
going to be any negotiation at all. That

1

**Longstreth**

2

**would be the fundamental question.**

3

Q. If you look at Mr. Fowler's report.

4

**A. Yes.**

5

Q. On page 2 in the footnotes, I'd like to draw your attention to footnote 7, which quotes from the Third Circuit's opinion in this case, and first off, have you read the Third Circuit's opinion in this case?

10

**A. I have.**

11

Q. And Mr. Fowler quotes from a portion of that opinion in Footnote 7, which he quotes in the opinion, the Court notes and he quotes, "What the defendants would have had to pay Marvel, after arm's length bargaining, for the restrictions defendants secured without compensation."

18

Do either of your reports address that issue?

20

MR. FRIEDMAN: I object to the form of the question.

22

**A. Yes, I think they do. I mean, they don't -- they do not develop a mathematical or other kind of formula for arriving at a dollar amount. But they do provide insight**

10 All of that is essential  
11 information to arrive at an amount if there  
12 is going to be an amount to be paid.

13 So I think the answer to your  
14 question is yes.

15 Q. If you look at Exhibit 1 to your  
16 initial report, which is -- I mean your  
17 initial report, which is Exhibit 1.

## 18 A. My report?

19 Q. Yes, your first report. Page 7 of  
20 Exhibit 1 is what I want to draw your  
21 attention to.

22 A. Where is Exhibit 1?

25 Okay

1

**Longstreth**

2

Q. This contains the answers to six  
and seven in this section?

4

**A. Yes.**

5

Q. There is a description at  
paragraph -- the last paragraph on this page.

7

**A. Uh-huh.**

8

Q. As I read this, of discussions  
that -- or the process that you would employ  
if you were a director asked to negotiate  
with Mr. Perelman as to the terms of this  
transaction; is that correct?

13

**A. Yes.**

14

Q. And in it, you reference that the  
independent directors would retain A,  
counsel, and B, bankers.

17

Do you see that that was what you  
indicated it would be responsible for the  
directors to do before the negotiations; is  
that right?

21

**A. Yeah, this is if they had decided  
that they were going to become involved in  
the issuance of the notes to the extent that  
they were being asked to be involved. And in  
fact, they were involved as it turned out.**

1 Longstreth

2                   If they decided to that for a  
3 price, they would do that. Then and only  
4 then would they sit down with independent  
5 counsel and bankers to talk about what that  
6 price might be.

7 Q. So it's your view that the  
8 directors would reject an approach by Mr.  
9 Perelman without first meeting with  
10 financial and legal advisors to inform  
11 themselves of whether that was the right  
12 decision to make or not?

13           A.     I don't know whether they would  
14     bring in investor bankers before they made  
15     that decision. I think they could have made  
16     the decision on their own because they are  
17     competent directors. They know their  
18     business. Presumably they know it a lot  
19     better than any banker would know it. What  
20     they could use, in my judgment, where I would  
21     feel I needed help was when I got down to a  
22     negotiation.

23 Q. So in negotiations, if you made a  
24 decision to engage in arm's length  
25 negotiations, you would want legal advice and

1 Longstreth

2 you would want financial advice as to how to  
3 approach that negotiation; is that correct?

4           A.     Yes, I would want professional  
5           help.

6 Q. And in your initial report, you go  
7 on to say, "These advisors would serve Marvel  
8 through its independent directors in  
9 determining what kind of benefit, if any, and  
10 what size could constitute a reasonable and  
11 to the independent directors acceptable quid  
12 pro quo for allowing the restrictions to be  
13 imposed. I would ask the advisors to develop  
14 as many alternative ways of benefitting  
15 Marvel adequately as possible."

16 That was your view in your initial  
17 report as to how the directors should  
18 approach the bargaining; is that correct?

22 Q. I'm confirming that was your view  
23 in your initial report. correct?

24 A. Yes.

25 Q. And in your rebuttal report, before

7 A. No.

<sup>8</sup> Q. You are a lawyer: is that correct?

9 A. I don't practice any more

10 Q. At one time you were a lawyer?

11           A.       I was at one time.  Technically, I  
12        still am a member of the bar.

13 Q. You have never been an investment  
14 banker; is that correct?

15 A. Never been an investment banker

16 Q. And you never held yourself out as  
17 an expert financial advisor?

18 A. That's not correct.

19 Q. You have held yourself out as a  
20 professional financial advisor?

## 21 A. I do right now

22 Q. In connection with providing  
23 financial advice for companies --

24                   A.        No, in connection with the  
25                   management of money.

1

**Longstreth**

2

Q. In terms of the work an investment banker would do in analyzing potential or financial structures of a financing transaction, is that something that you would consider yourself expert in?

7

A. Yes. I mean, my experience has been over a long period of time doing financial transactions and giving advice with them. And as you know, legal advice and business advice and financial advice tend to blur and overlap each other. So I think the answer to your question is yes.

14

Q. Well, when you were saying that the board should go out and get expert financial advisors --

17

A. Right.

18

Q. -- do you think that you would be a suitable candidate for the board to hire?

20

A. No. I mean, I didn't have myself in mind. I was thinking of someone that is a -- is not providing the legal input, but is providing the financial analysis and input.

24

Q. You have read --

25

A. In other words, it could be a

1 Longstreth

<sup>2</sup> commercial banker, investment banker.

3 Q. You have read Mr. Fowler's CV  
4 that's attached to his report; is that right?

5 A. I have.

6 Q. And is Mr. Fowler someone who has  
7 the expertise and background that you think  
8 would meet minimum qualifications for a board  
9 to engage as a financial advisor in a  
10 negotiation such as this?

11                   A.        I don't remember his  
12                   qualifications.

13 Q. Well, why don't you take a look at  
14 them. It's an exhibit to his report.  
15 Exhibit 2.

16 A. Exhibit 23

<sup>17</sup> Q. To his report, which is Exhibit 7

18           A.       I'm looking at -- when he did all  
19           this advising. where was it?

20 Q. Credit Suisse, First Boston

21           A.     Yes, well, he has got the kind of  
22           experience I'm talking about.

23                   But he would have to be -- to  
24 qualify, he would have to be completely  
25 independent and undividedly loyal to the